



Written Testimony of Representative Garey Bies
Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform and Housing
Senate Bill 573 – Access to Law Enforcement Records

Chairperson Taylor and committee members, I would like to take this opportunity to submit my testimony in support of Senate Bill 573, relating to public access to certain local government law enforcement records.

Senate Bill 573 is a revised version of legislation I introduced last session at the request of the Winnebago County Sheriff. As a former Chief Deputy I understand well the concerns Sheriff Brooks has with loopholes in current law that may allow for the release of sensitive records including those related to ongoing investigations. The specific problem being addressed by SB 573 concerns information technology departments established for joint operation by multiple law enforcement agencies.

For example, let's say that Brown, Kewaunee and Door County Sheriff's departments establish a joint computer system for all three departments. Door County then is in the process of performing an investigation, the records for which are maintained by the joint IT department. A person, in an attempt to circumvent the Door County Sheriff's department could request the release of the records from the IT department, which might, in the case of an active investigation, inadvertently release the records.

Senate Bill 573 establishes that IT departments are not custodians of law enforcement records.

Senate Bill 573 differs from last session's legislation as it does not alter the definition of what is a public record and is narrowly drafted to apply only to information technology departments. In addition, at the request of the Department of Justice, we removed the language that directed the IT department to refer the records requestor to the appropriate custodian of the record. The reason for this change is because information technology department staff are not law enforcement officers, are not trained in law enforcement and should not be examining sensitive law enforcement records in an effort to make any determination about them, including what agency is the proper custodian of the records. Under SB 573, upon receiving a request for a law enforcement record, an IT department shall simply deny the request.

It should also be noted that Senate Bill 573 incorporates Assembly Amendment 1 to Assembly Bill 489. Assembly Amendment 1 to AB 489 modifies the bill in order to include regional or state wide data centers including the Office of Justice Assistance's "Wisconsin Justice Information Sharing" program.

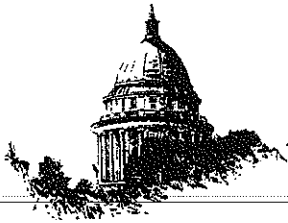
One point that I want to make sure is understood: **SB 573 does not change the law as to what records are available to the public.** Under current law, if a record is available to the public, SB 573 would not change that status. Again, if the record is open to the public now, it will be open to the public under 573. This bill is not about reducing what records are available to the public. This bill is about clarifying who is the proper custodian of records and to whom an open records request should be submitted.

Thank you.

First for Wisconsin!

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Testimony of Senator John Lehman
Senate Bill 573
Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance
Reform, and Housing
March 17, 2010

Chair Taylor and members of the Senate Judiciary Committee, thank you for the opportunity to testify in favor of Senate Bill 573. A hearing on this legislation, clarifying who is the custodian of local law enforcement records for public access, is particularly timely in the midst of the media's "Sunshine Week" that highlights the importance of public access to government information.

Wisconsin's open records law says that whoever maintains a record is its custodian. But the constant march of technology makes this a more complicated issue today than it was in the days of paper records and filing cabinets.

Law enforcement records today are increasingly created and maintained in electronic format and local governments seeking efficiencies are creating joint computer systems to host the records of multiple agencies in one place, under one information technology department. In addition, real time information sharing has become an increasingly important law enforcement tool. In Wisconsin our Office of Justice Assistance's Justice Gateway Project serves as a data portal that facilitates such information sharing between agencies throughout the state.

While there are a number of introduced legislative proposals that would modify or change access to government records, SB 573 is not one of them. This bill does not change the definition of an open record or modify the balancing test requirement in our current public records law.

Instead, Senate Bill 573 clarifies the state open records law in light of changes in technology, record maintenance and local government's consolidation of services by specifying that, for public access purposes, the local law enforcement agency remains the record custodian. A local government information technology department that stores records on a server or the Office of Justice Assistance by facilitating information sharing via the Justice Gateway Project do not also become records custodians.

This law change will protect public access to records by eliminating confusion over where to direct requests for information. And this clarification will also protect public safety by ensuring that a proper, informed balancing test may be conducted to, if needed, maintain investigative integrity or protect a crime victim's rights.

This legislation has bipartisan authorship and the support of a number of groups representing law enforcement and municipal governments. I hope that Judiciary Committee members will also see fit to support Senate Bill 573.

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